

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

| | | |
|--------------------------|---|---------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | No. 1:05cr264 (LMB) |
| |) | |
| THOMAS MOROCCO HAGER |) | |

**MEMORANDUM OF THE UNITED STATES
REGARDING SCHEDULING**

The United States, through counsel, hereby submits this memorandum in advance of the status conference scheduled for September 16, 2016.

The government has substantially completed its review of trial counsel's records. In this regard, two specific tasks remain: (1) reviewing the hard-copy records maintained by habeas counsel (so that we can compare these to the scanned copies received electronically), a process that should not take substantial time and effort and can be completed within the next few weeks; and (2) contacting expert witnesses retained by trial counsel in 2006-2007 to determine if the trial experts communicated any reports, memoranda, or other information to trial counsel in addition to the materials found in trial counsel's files.

With one possible exception, the government does not believe that it will be necessary to depose trial counsel or have trial counsel respond to formal interrogatories. The information in trial counsel's records appears sufficient for responding to the allegations in the Section 2255 motion.

The one exception may be with respect to mental health issues, *i.e.*, the allegation that trial counsel was ineffective for not presenting evidence in the defendant's mitigation case of

certain alleged mental impairments and/or deficiencies. We have decided that we cannot adequately understand the mental health issues and compare the testing and analysis done on behalf of trial counsel with the testing and analysis done more recently on behalf of habeas counsel without the assistance of an expert. To that end, the government has retained Dr. Raymond Patterson to assist it in this effort.

The government is not proposing any additional mental health testing. Dr. Patterson will be consulted simply to provide government counsel with an expert's explanation of what exactly was done by each set of experts and what the results of their tests mean. Dr. Patterson may offer an opinion as to the mitigation-case allegations in the Section 2255 motion that the defendant suffered from some sort of mental impairment. We say "may" because Dr. Patterson knows very little about this case, and he will need to review an extensive amount of material before he can opine on any aspect of the mitigation case presented at trial or the mitigation case that allegedly should have been presented.

Dr. Patterson has an extremely busy fall schedule, with a number of long-standing commitments in other cases. Dr. Patterson estimates that he will need at least three, perhaps even four, months to digest the materials, go over them with government counsel, and provide an opinion. It is possible that in doing this analysis, Dr. Patterson may identify an issue requiring an explanation from trial counsel and that explanation is not readily apparent from trial counsel's records.

As set forth in our motion to continue the status hearing, undersigned counsel are responsible for a number of other matters (DE 595). In addition to the list of pending matters for AUSA Trump, he now has a trial scheduled in *United States v. Nam* for October 19. More importantly, however, AUSA Trump will be on paternity leave for about four to six weeks

beginning October 31, 2016, and unable to devote much, if any, attention to this case until he returns in December.

Taking all of these factors into account, the government suggests that it file its brief in response to the Section 2255 motion on or before February 24, 2017. Although February 2017 may seem like a long way off, given that Dr. Patterson may not be able to complete his work until December or January, it is not, in our opinion, an unreasonable deadline.

Respectfully submitted,

Dana J. Boente
United States Attorney

James L. Trump
Christopher Catizone
Assistant United States Attorneys
Attorneys for the United States

By: /s/
James L. Trump
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
(703) 299-3726
jim.trump@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 2016, I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

By: /s/
James L. Trump
Assistant United States Attorney
Attorney for the United States
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, Virginia 22314
(703) 299-3726
jim.trump@usdoj.gov